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CONSOLIDATED CITY AND COUNTY GOVERNMENT OF SAN FRANCISCO

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The history of San Francisco as a municipality is unique.

Two former Mexican pueblos, Yerba Buena and San Francisco, had been permitted to lapse and a Mexican Justice of the Peace exercised sole authority up to July 8, 1846, over the "Jurisdiction of San Francisco" which contained within its limits what remained of these two villages.

On July 8th, 1846, the American flag was hoisted on the plaza of Yerba Buena, and the surrounding territory was declared American soil. Military government prevailed until January 30th, 1847, when a provisional government was organized with an Alcalde as Chief Magistrate. The machinery provided by the Mexican colonization laws for the creation and government of pueblos was utilized and San Francisco as a municipality came into being by Ordinance of the Alcalde. Subsequently attempts were made before the treaty of Queretaro to organize a City along American lines, but were by military order stopped. Pueblo government continued until the adoption of a city charter under the Constitution of California.

An Act of the first Legislature of the State of California, passed February 18, 1850, divided the State into counties, fixing the boundaries of San Francisco County.

The City of San Francisco was created by Act of April 15, 1850, (Statutes 1850, page 223) which was an act to incorporate the City. This Act provided for a complete organization of the City and a full set of offices independent of the county offices of the County of San Francisco. Thus there were two sets of officers, one for the City and one for the County. The Act creating the County, and also the Act creating the City, were amended at subsequent sessions of the Legislature, and finally, on April 19, 1856 (Statutes 1856, page 145) an Act was passed "To Repeal the Several Charters of the City of San Francisco, to Establish the Boundaries of the City and County of San Francisco, and to Consolidate the Government thereof."

From *Martin v. Election Commissioners*, 126 Cal. at 407-8, we find the following language of the Supreme Court of this State, referring to this Consolidation Act.

"By the first section of said act it is provided that 'the corporation or body politic and corporate, now existing and known as the city of San Francisco, shall remain and continue to be a body politic and corporate in name and in fact, by the name of the city and county of San Francisco, and by that name shall have perpetual succession, may sue and defend in all courts and places, and in all matters and proceedings whatever, and may have and may use a common seal, and the same may alter at pleasure; and may purchase, receive, hold, and enjoy real and personal property, and sell, convey, mortgage, and dispose of the same for the common benefit.'

"By the second section it is provided that 'the public buildings, lands, and property, all rights of property and rights of action, and all moneys, revenues, and income belonging or appertaining either to the corporation of the city of San Francisco, or to the county of San Francisco, are hereby declared to be vested in, and to appertain to, the said city and county of San Francisco; and the moneys in the treasury of said city, and in the treasury of said county of San Francisco and all the revenues and income from whatsoever source arising, including delinquent taxes upon persons and property appertaining to the said city or to the said county, shall be handed over, paid, and received into the treasury of the city and county of San Francisco as a part of the general fund.'"

At that time, as now, San Francisco was the only instance of a consolidated City and County in California.

The City and County continued to be governed by the Consolidation Act, with certain amendments thereto, down to the adoption of the present Charter, which was prepared and proposed by a Board of Freeholders, elected December 27, 1897, in pursuance of the provision of the State Constitution authorizing the adoption of charters as the foundation of government for "Any city containing a population of more than three thousand five hundred inhabitants," and further providing that:

"City and county government may be merged and consolidated into one municipal government with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes."

"Where a city and county government has been merged and consolidated into one municipal government, it shall also be competent in any charter framed to provide for the manner in which, the time at which, and the terms for which the several county officers shall be

elected or appointed, for their compensation, and for the number of deputies that each shall have, and for the compensation payable to each of such deputies."

This charter was ratified by a vote of the people of the City and County, May 26, 1898, and approved by the Legislature of the State, as required by the Constitution, January 26, 1899. The Charter was in full force and effect, January 8, 1900. It has been amended at three different special charter amendment elections held since its first adoption.

The immediate occasion for the consolidation of the City and County governments in 1856, was the same corrupt and extravagant *City* government in San Francisco that led to the formation of the famous Vigilance Committee, which did such effective work in this early period of the City's history. Inefficiency, extravagance and flagrant corruption in the conduct of the City government, as contrasted with the economical and efficient management of the County government, led to relief being sought from the State Legislature, so that the good results accomplished by the Reform Movement back of the Vigilantes, in the local San Francisco elections, might find permanent security in a new form of government which would make more difficult, in the future, a relapse back to the old conditions of extravagance and waste which were thought to be inherent in the dual form of government that had prevailed in San Francisco. And thus, we find that, just as in more recent years, the election of good officials has led to their securing the perpetuation of the policies for which they stand, so in this beginning of our City's history, these "Progressives" of the days of '56 realized the value of legislative enactment as a co-operating force to support the efficient men elected to public office, and to prevent, in some degree at least, a recurrence of conditions against which they had contended.

We can best appreciate the view point of these early leaders of public life in San Francisco by reading what they said and wrote when the question of the passage of the Consolidation Act was a matter of public and legislative discussion.

In a petition which was circulated for signatures, when the Legislature was considering the Consolidation Act, we find the following:

"To the Legislature of the State of California:

"The undersigned petitioners, citizens of the City and County of San Francisco, respectfully represent to your honorable body that the city of San Francisco is suffering from an enormous burden of debt and taxation. That, unless some measures are adopted to relieve the

city from this oppressive weight of debt and taxes, they will deter the investment of capital, drive population from the State, and blight the growth of this place, with which that of the State at large is intimately identified.

"Your memorialists represent, that without a change in the City Government, which shall diminish the weight of taxation, the City will neither be able to discharge the interest on debts already contracted, nor meet the demand for current disbursements.

"The undersigned as one means of greatly diminishing present expenses and taxation, ask that the present City Government may be abolished. It supports an army of officers and dependents, who are of little practical use either in preserving order or keeping the streets in repair.

"The Mayor is, perhaps, a necessary officer in the capacity of Recorder and to guard the general interests of the city, but the whole police force is a useless expense, whose duties may or will be discharged by the Sheriff and the ordinary Constables. We see no utility in a city Government separate from that of a county. The county officers can as well discharge all the duties of the City Government as those who hold office under a city charter.

"The present condition of the streets and public improvements of the city, abundantly attests the total inefficiency of the present system. It would be far preferable to impose the improvements and repairs of the streets on the property holders, than to levy assessments and street taxes, which are seldom applied, while the streets and highways are left in a ruinous condition."

The Consolidation Bill was drafted by Horace Hawes, State Assemblyman from San Francisco, and Senator Wm. W. Hawks made a fervid speech in support of this measure in the State Senate, on April 25, 1855. This speech teems with the sarcasm and personalities and grandiose style so prevalent in the early, and, in fact, in some of the later legislative debates, but, we may well understand the sincere motive for good government at the bottom of this Legislator's advocacy, by quoting at length from this speech, some portions of which seem to come down through these years to times more recent and conditions not so very different.

Referring to the opposition to this Bill from one of the members of the Senate, Mr. Hawks said:

"And now, Mr. President, we come to the Senator's complaint that by this bill we are taking the corruption of the city, and throwing it into the present pure stream of the county affairs, against the county's wish.—No, sir. We propose to draw the city out of the corrupting influences that at present surround her. We propose to throw aside and abjure this disgusting mass of trickery and corruption and fraud;

we propose to strike into a thousand atoms the intricate wheels and levers of this infernal machine called a charter, under whose terrible operations the life blood has been drawn, the energies have been crushed, and the prosperity destroyed, of the fairest city on the Pacific coast. We propose to annihilate that dreadful engine, to the mournful music of whose workings fraud has stalked abroad in the light of day; infamy has carried on its unblushing revels, and honest toil and enterprise have gradually pursued their feeble and tottering steps to destruction. We propose, sir, not to inflict this curse upon the county, but having turned the stream of reform through the rank pollution of that vast Augean stable, we propose to place the city, regenerated and newly born, under a simple and economical city government. This, sir, is what the bill proposes to do. And I ask, sir, in the name of oppressed thousands, whose enterprise to themselves at present is as nothing, and whose prosperity is blighted, that this bill may pass. . . .

"The Senator further argues that the county is doing well enough, and needs no change in her government. He tells us that the very men who have been managing affairs of the city, and driven her to bankruptcy, have managed the affairs of the county perfectly well. I ask, sir, no stronger argument in my favor. It is because this county government is so simple, that opportunities of fraud do not occur; that even the men who have ruined the city, have been powerless to rob the county.—We propose, sir, to put the city under that same simple government. Its policy has been well tested.

"This, sir, is not a question as to which is the best charter to give that city. It is as to the theory of giving her any charter at all. If she could be entrusted with any charter, I freely admit that I believe in my heart none could be better than that draughted by my colleague in the Lower House, (Mr. Johnston). But no charter will cure her of her deadly malady.—There is a poisonous ulcer eating into the heart of that fair city, that all the salves and unguents spread upon the face of a charter cannot heal. No plaster will effect a cure. If it were a good charter, it might for a time hide from view the hideous mass of festering corruption that is teeming there, and perhaps kindle in the bosoms of some few despairing sufferers a faint hope of happier days; better never to be kindled for the happiness of the waking hour of the deluded dreamers. No plaster will cure that ulcer, but the knife—the knife—must be applied, and the ulcer must be eradicated. The boreworm has eaten into that city's heart until its caverns but return a hollow echo of its once healthful palpitations. Radical, thorough and sweeping reform is needed, and will alone save her from perdition. The surgeon's knife must be applied, or political and financial mortification will surely ensue.

"Sir, I have known that city since she was nothing more than a modest collection of frame houses and canvas tents. I have seen her progress over all obstacles. The Fire King has been no stop to her. The pestilence has not barred her path to glory; the energies of her people

have laughed to scorn calamity, disaster and death, in their resistless march of improvement. But, alas, it was reserved for internal treachery to render futile her energies, and convert her splendor into mockery—a mockery the more bitter from the surpassing beauty of the monument which perpetuates it. It is urged that under a charter government she has attained to her present grandeur. It is so; for up to this time, honest enterprise has outweighed the machinations of plotting and corrupt officials. They have at last, however, brought down their victim, and all bleeding and panting, it lies at the feet of its conquerors. Enterprise in San Francisco has at length been weighed in the balance against rascality, and enterprise has been found wanting.

“And what has brought us to this state of things? This intricate system of government: affording a thousand chances for plunder, and yet a thousand cloaks to hide the Caitiff who robs a trusting people. This duplicate set of officers, officials, hangers on, loafers, whippers in and general plunderers. . . .

“Now, Mr. President, in a few words, I will have done. Upon this bill I have expended all my energies, and any ability I may possess. I am conscientious in my belief that it will relieve a tax-ridden people, and once more raise the drooping head of many a worthy, enterprising and industrious man long bowed down in sorrow and care under the killing weight of the incubus of misrule. I believe that under its influence the sun of prosperity will once more dawn upon that benighted city—that smiles will sit upon faces where sadness is now painted and deep and heartfelt curses will be turned to joyous laughter. It is my best effort—and I can do no more for my constituents. Nor is it mine alone. The bill is replete with many wise provisions, which are the suggestions of the colleagues, Messrs. Mahoney and Flint. It has been carefully matured and subjected to the revision of some of the ablest lawyers, and most expert financiers of California. It is the production of days and weeks of toil, and honest study—and my colleagues and myself respectfully submit it to the Senate as our joint production—in the welfare of which we feel an equal interest and for the policy of which we are equally responsible, collectively and individually.

“Pass this bill, sir, and like a tree lopped of its useless dying branches which but serve to draw from it its vitality, prosperity will once more spring up in the city of San Francisco.”

Bancroft in his “History of the United States,” Vol. XXXII, at pages 644–45, speaking of the momentous election of November 4, 1856, in San Francisco, which resulted in victory for the movement behind the San Francisco Vigilance Committee, says:

“The election of the 4th of November, so far as San Francisco County was concerned, resulted in the victory of the people over the

professional politician. The fact that Buchanan, democrat, received the largest number of votes for president, while the congressmen and state and city officers elected were republicans, people's reform candidates, and vigilants, shows that while a majority of the citizens favored the democratic party, they were, by the late trials which they had undergone, sufficiently divorced from party to cast their votes on the side of purgation and purity.

"Already was now in force in San Francisco the consolidation act, devised by Horace Hawes, by means of which the city and county were united under one government with reduced legislative powers, and with taxes, which might be levied for each specific object, limited. This act required a strict severalization of the public fund, and prohibited, at any time, drawing or borrowing from one fund moneys to be employed for the benefit of another fund. All officers of the government were brought down to strict economy and accountability.

"Its origin was that same dissatisfaction, arising from long continued indifference, neglect, not to say rascality and criminality in public affairs, which called into being the Vigilance Committee; and although drawn by a mind regarded by some as bordering on insanity, and passed by a legislature little loving San Francisco, it was a most wise and practicable measure for thriftless, peculative times.

"Some said that to this act rather than to the people's party San Francisco was indebted for her subsequent good behavior; but this is hardly true. Laws are of little avail when the people are not with them, as we have seen. Besides, Sacramento had her Vigilance Committee and her economic charter, but neglecting to put good men in office, her finances and morals were comparatively little improved thereby."

And in Volume XVIII of said history, at page 768, again speaking of the final triumph of the Vigilance Committee, Bancroft says:

"The assassination on May 14, 1856, of J. King of William, who in the *Bulletin* had undertaken to expose official corruption, gave the decisive impulse. The people rose almost *en masse* to avenge their champion. A vigilance committee formed again to supervise and purify the city, especially the political and judicial administration, chiefly by driving forth the miscreants through whom politicians carried out their election trickery, by calling upon the people to nominate candidates of high character, and by guarding the ballot-box from fraud. So effectively was this task performed, that after a vigilance session of three months, San Francisco stood transformed from among the most corrupt and insecure towns in the Union to one which within a year came to be lauded as a model for wise and economic government.

"The reform secured a sound basis in the Consolidation Act, the chief aim of which was municipal retrenchment by merging the double city and county governments into one, and reducing the pay and fees as well as number of officials."

And at page 771, in speaking of the Consolidation Act Bancroft describes how Mr. Hawes, who introduced the Bill, had once been a prefect of San Francisco County and how he was "mobbed by partisans of disappointed plunderers."

Hittell, in his history of San Francisco, speaking of the new administration elected at the first City election held after the organization of the Vigilance Committee, says, at page 263:

"The new administration was a marvel of economy. The expenses of the city and county had been two millions six hundred and forty-six thousand dollars in 1855, and in 1857 they were only three hundred and fifty-three thousand dollars. Much of this saving was due to the consolidation act adopted by the legislature in April, 1856; but a large part of it to the new officials."

We see then, that, primarily, the cry for consolidation was to reduce the cost of supporting two sets of officers, one for the City, and one for the County, with the attendant waste following in the wake of such a form of government. We find this point again discussed in the constitutional convention of 1878-79.

When the section of our State Constitution providing for freeholders municipal charters was under debate in the constitutional convention of 1878-79, Judge Hager, Chairman of the Committee on Municipal Corporations, said of this section (Section 8, Article XI, then Section 9) as quoted in *Martin v. Election Commissioners*, 126 Cal. at pages 409-10 (Debates of the Constitutional Convention, p. 1059)—

" 'This applies strictly and only to the city and county of San Francisco.' (The section originally required a population of more than one hundred thousand to entitle the inhabitants of such city to frame such a charter.) He further said: 'I cannot see that any evil will come from it; we have this peculiar government there, a consolidated city and county government. I do not agree with my friend from Sacramento, that the tendency is to multiply offices. The tendency is to reduce the number of offices. Instead of having a set of city officers and a set of county officers, they are consolidated. We have a sheriff who is the sheriff of the county and of the city. . . . We have a tax collector, and we have an auditor that acts for both; formerly we had one for each. The tendency of a consolidated government is to reduce the officers from two to one in every sense, and reduce the expense in every particular, and not, as the gentleman said, for the purpose of multiplying offices.' "

We can easily understand the cost of this duplication of officers by noting the officers existing under the City, and under the County, governments.

The Act of 1850 which created the City government, provided for the following City officers:

Mayor; Recorder; Board of Aldermen; Board of Assistant Aldermen, which two boards were styled "Common Council"; Treasurer; Comptroller; Street Commissioners; Collector of City Taxes; City Marshal; City Attorney and two Assessors for each City ward. And the County officers in San Francisco included a District Attorney; County Clerk; County Attorney; County Surveyor; Sheriff; Recorder; Assessor; Coroner; Treasurer; Public Administrator, and the County Board of Supervisors.

It is thus apparent that by the Consolidation Act unnecessary duplication of officers was at once done away with in the cases of the Recorder, the legislative body of the City and County, the Treasurer, the City Attorney, and the Assessor, among other officers.

It might be here said that there is an apparently unnecessary duplication of work at the present time in San Francisco, in the work done by the Sheriff's office and the police department. If a man is charged with the crime of grand larceny, he is arrested by a police officer. He is imprisoned in the City prison, under charge of the police department. If held for trial by the committing magistrate, he is turned over to the Sheriff, and confined in the County Jail, under the charge of the Sheriff. If convicted, and sentenced to the State Penitentiary, he is taken to that institution under charge of the Sheriff.

San Francisco, then, under the Consolidation Act, as now under the Freeholders' Charter, was a government which at one and the same time was a City and a County. In some respects it acts as a city—in others, as a county. This nature of our government which is peculiar to a consolidated City and County, cannot be better expressed than it has been described by the Supreme Court of California in the case of *Kahn v. Suto*, 114 Cal., 316, decided while the old Consolidation Act was still operative.

The Court says:

"While the corporate name of this body politic is the city and county of San Francisco, it is recognized by the constitution as having the attributes of both a city and a county, and also as having attributes as distinguishing it from either. Geographically it is one of the legal subdivisions of the State, and in that respect is recognized in section 1 of article XI of the constitution, as one of the counties of the State. Politically it is regarded in that instrument as a municipal corporation."

And again,

"But, while the people of San Francisco are thus to be regarded as under a municipal government, with the right to select officers to execute the powers of that government according to the terms of its charter, the territory over which that government is exercised is at the same time a county, and for those purposes for which county officers exercise authority, not derived from the charter and disconnected with municipal government, its officers are properly termed county officers. Considered in its political and judicial relations to other portions of the state, the officers elected by its voters, to the extent that they exercise only such powers as are given by laws relating merely to counties and who do not derive any of their authority from the charter, are to be regarded as county officers, as distinguished from city officers."

And the Court goes on to say:

"San Francisco is, therefore, both a city and a county, and, although the boundaries of the two bodies corporate are coincident, the electors within this territory vote for officers whose authority and functions are derived exclusively from the charter of the city, and also for officers whose powers and duties are prescribed by general laws, and upon which the charter is silent. It must follow from this that some of its officers are city officers and others are county officers. There is nothing unusual or inconsistent in this. The "government" of the city is municipal, and the officers who are to exercise that government are municipal officers, but the territory in which that government is exercised is still a part of the state, and for all purposes other than municipal government, is subject to its control, with the right on the part of the state to authorize the election therein of such officers as may be required to execute its general laws, or to perform such functions disconnected with the municipal government, as may pertain to the government of the state."

Illustrating this distinction between City officers and County officers, the Court held that the following were municipal rather than county officers: The Mayor; the City and County Attorney; Superintendent of Public Streets, Highways and Squares; School Directors; Treasurer; Auditor; Tax Collector; Surveyor, and Board of Supervisors. And that the following were County officers; District Attorney; Sheriff; County Clerk; County Recorder; Coroner; Public Administrator; Assessor and Superintendent of Schools.

It was therefore held that the terms of office of the municipal officers would be, under the San Francisco Consolidation Act, two years, while that of the County officers would be, under the general County Government Act, four years. However, since this decision, the State Consti-

tution has been amended, as we saw above, permitting the Charter of a consolidated City and County to fix the terms of County officers.

Of the officials named by our Supreme Court as existing under the Consolidation Act, the following are retained under the freeholders' charter, and are now, as then, municipal officers, the Mayor, the City and County Attorney, now more properly named the City Attorney, the School Directors, Treasurer, Auditor, Tax Collector, and Board of Supervisors. The Superintendent of Public Streets, Highways and Squares has been superseded by the Board of Public Works, a municipal board appointed by the Mayor. The Surveyor has been superseded by the City Engineer, a municipal official appointed by the Board of Public Works.

All those officials named as county officers under the Consolidation Act are retained under the present Charter as County officers.

There is considerable economy gained in having a so-called "municipal officer" sometimes act in the capacity of a County official, or vice versa. For instance the Auditor, Tax Collector, and Board of Supervisors, municipal officers, often act, in their official capacity in purely County business. A good example of this is in the making up of the assessment roll for the levying of the state tax, in the collection of state taxes, and in the Supervisors acting as a County Board of Equalization. On the other hand, the District Attorney, a County officer, prosecutes for the violation of City Ordinances.

Aside from the economy gained from consolidation, the experience of San Francisco has shown that a most powerful weapon to secure local self control and freedom from interference by the State Legislature, is furnished by this consolidation of City and County government, when such a consolidated City and County is empowered to adopt a municipal freeholders' charter.

In the above case of *Kahn v. Sutro*, and in the more recent case decided by our Supreme Court, *Nicholl v. Koster*, Volume XXXIX, Cal. Dec., p. 263, it is pointed out very clearly that, so far as its capacity as a County is concerned, San Francisco is subject to control by the Legislature the same as other counties are, unless the Charter provides for County affairs. The result of the consolidation, in effect, has been to make the government of the County the same as the government of the City, or, in other words, the City has assumed and taken over the duties and obligations of a county of the state. Thus the City must maintain a District Attorney, a Recorder, a County Clerk and

an Assessor, all of these being purely County officers. The mode and manner, however, of fulfilling this duty has been left to the City, and, therefore, the City has power to decide the manner and method of electing or appointing the necessary officers to fulfill these duties, and their compensation. The item of compensation is of the utmost importance, as the City is thus relieved of the general fee bills which are so likely to emanate from a State Legislature, fixing considerable expense on County treasuries.

The law of the State relating to election of County officers does not permit of a non-partisan election. By a charter provision, these County officers in San Francisco, however, are elected under a non-partisan election law. The salaries of these officers, the number of their deputies and the salaries of these deputies are likewise fixed by the Charter so that the City is completely divorced from the Legislature in the matter of the election, appointment, removal or fixing of the term of office of these county officers.

The Legislature, of course, can create additional county officers and make their salaries payable by the County Treasury, as was held in the case of *Nicholl v. Koster*, but it is *within the power* of the City to take over to itself the matter of determining the method, manner, compensation and term of office of these additional officials, by simply making provision therefor in the Charter.

The counties of the State are divided into classes according to population, each County of the State occupying a different class. The Legislature of the State, at every session, is continually passing new laws relating to the several County governments, providing for deputies of County officers and changing the compensation. Under the consolidation of the City and County the City of San Francisco is entirely free from legislation of this character. The net result of the consolidation is that the City and County of San Francisco is supreme in matters relating to its own government, being only required to fulfill the obligations that the general law of the State, as a matter of State necessity, imposes upon the counties. The method and manner of such fulfillment is left to the City and County to determine for itself.

It has been the experience of San Francisco that sometimes the provisions of the Charter on a given subject do not constitute as workable a scheme as the provisions of the general State law on the same subject matter, which would apply were the Charter silent. Thus, it was found that the San Francisco charter requirements of procedure for the improvement of streets were not nearly so satisfactory as

some recent advanced legislation adopted by the State Legislature. A municipality should not, of course, be compelled to await amendments to the Charter if an already existing and satisfactory general law can be utilized.

To make possible such choice of alternative methods, in the case of the street improvement law above referred to, our Charter was recently amended, authorizing the Board of Supervisors, by an affirmative vote of not less than two-thirds of the members thereof, by Ordinance to substitute the method of procedure in any general state law now in force, or as the same may be amended, or that may hereafter be enacted, in place of the Charter procedure.

It would seem that some such general authorization to take advantage of improved general state legislation might well be incorporated in municipal charters, so long as proper precautions are taken against the fundamental charter securities being frittered away by any local legislative body which might feel inclined so to do.

With the right secured to the merged City and County, in its Charter, to avail itself of State laws where application of such State laws is practicable, a consolidated City and County government has commended itself to San Francisco as a simple and efficient form of municipality.